

SEP 21 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PHYLLIS L. FLEMING,

Plaintiff - Appellant,

v.

JO ANNE B. BARNHART,

Defendant - Appellee.

No. 04-17020

D.C. No. CV-03-04421-JW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Argued and Submitted September 11, 2006
San Francisco, California

Before: FERNANDEZ, W. FLETCHER, and RAWLINSON, Circuit Judges.

The district court properly granted summary judgment in favor of the Commissioner of Social Security, because the Administrative Law Judge's (ALJ) findings that Phyllis L. Fleming (Fleming) did not suffer from a physical or mental impairment affecting her abilities to perform light exertional work were supported

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

by substantial evidence in the record. *See Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1004 (9th Cir. 2006).

The ALJ’s evaluation of Fleming’s residual functional capacity was consistent with the overall conclusion of the various physicians that she was not disabled. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005) (“We will affirm the ALJ’s determination of . . . RFC if the ALJ applied the proper legal standard and his decision is supported by substantial evidence.”) (citation omitted).

The ALJ properly limited his questioning of the vocational expert to Fleming’s physical impairment, because his finding of no mental impairment was supported by substantial evidence in the record. *See Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001); *see also Bayliss*, 427 F.3d at 1217 (citation omitted).

Because Fleming failed to satisfy her burden of proving a disability at steps one through four of the five-step disability analysis, the ALJ was not required to make vocational findings at step five. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *see also* 20 C.F.R. § 404.1520(a)(iv) & (v).

AFFIRMED.